SUPREME COURT OF THE UNITED STATES

No. 299.

COLUMBUS ALEXANDER, PLAINTIFF IN ERROR,

vs.

HUGH B. SWEENY AND LEONARD HUYCK.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said supreme court before you, between Columbus Alexander, plaintiff, and Hugh B. Sweeny and Leonard Huyck, a manifest error has happened, to the great damage of the said Columbus Alexander, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United
2 States should be done.

Witness the honorable James Wayne, senior justice of the said Supreme Court of the United States, this third day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

R. J. MEIGS, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To Hugh B. Sweeny and Leonard Huyck, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Columbus Alexander is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness David K. Cartter, chief justice of the supreme court of the District of Columbia, the third day of November, 1863.

D. K. CARTTER, *Chief Justice.*

3 I acknowledge due and legal service of the within citation, November 3, 1864.

W. D. DAVIDGE.

4 Know all men by these presents that we, Columbus Alexander, Asbury Lloyd, and Samuel E. Douglass, are held and firmly bound Hugh B. Sweeny and Leonard Huyck in the sum of two hundred dollars lawful money, to be paid to the said Hugh B. Sweeny and Leonard Huyck, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made and done we bind

ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this third day of November, 1864.

Whereas, lately, at a supreme court of the District of Columbia, in a suit depending in the said court, wherein the said Columbus Alexander was plaintiff and the said Hugh B. Sweeny and Leonard Huyck were defendants, judgment was rendered against the said plaintiff, and he having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said Hugh B. Sweeny and Leonard Huyck, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next—

Now the condition of the above obligation is such that if the said Columbus Alexander shall prosecute said writ with effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; otherwise, to be and remain in full force and virtue.

COLUMBUS ALEXANDER. [SEAL.]
ASBURY LLOYD. [SEAL.]
SAM'L E. DOUGLASS. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. H. HARRISON.
Approved this 3d day of Nov., A. D. 1864.
D. K. CARTTER, *Chief Justice.*

5 In the supreme court of the District of Columbia—October term, 1864.

COLUMBUS ALEXANDER
vs.
HUGH B. SWEENY and LEONARD HUYCK. } At law.—No. 176.

Be it remembered that heretofore, to wit, on the 2d day of May, 1863, the abovenamed plaintiff, by Robert J. Brent, esq., his attorney, prosecuted and sued forth out of the supreme court of the District of Columbia the United States writ of capias ad respondendum, directed to the marshal of the District of Columbia, in form following, to wit:

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the marshal of the District of Columbia, greeting:

We command you that you take Hugh B. Sweeny and Leonard Huyck, late of Washington county, if they shall be found within the county of Washington, in your said District, and them safely keep, so that you have their bodies before the supreme court of the District of Columbia to be held for the county aforesaid, at the city of Washington, on the first Monday of May inst., to answer unto Columbus Alexander in a plea of trespass on the case and so forth. Hereof fail not at your peril, and have you then and there this writ.

6 Witness D. K. Cartter, esquire, chief judge of our said court, at the city of Washington, the 2d day of March, anno Domini one thousand eight hundred and sixty-three.

Issued the 2d day of May, 1863.

R. J. MEIGS, *Clerk.*

LLOYD.

And the said plaintiff, by his attorney aforesaid, declared against the said defendant in the plea aforesaid in form following, to wit:

Declaration.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Hugh B. Sweeny and Leonard Huyck, being associated and doing business under the name, style, and firm of Sweeny & Huyck, late of the county aforesaid, were attached to answer unto Columbus Alexander, of the city and District before named, in a plea of trespass on the case upon promises and so forth. And thereupon said plaintiff, by Asbury Lloyd, his attorney, complains that whereas the defendants, on the ninth day of March, in the year eighteen hundred and sixty-three, at the county aforesaid, were indebted to said plaintiff in the sum of fifteen thousand seven hundred and seventy-eight dollars and sixty-eight cents, current money of the United States, for sundry matters and articles properly chargeable in an account, as by a particular account thereof herewith into court exhibited appears, and being so indebted, said defendants in consideration thereof afterwards,
7 to wit, on the day and year aforesaid, at the county aforesaid, undertook and then and there faithfully promised said plaintiff to pay him the aforesaid sum of money when they should be thereto afterwards required.

And whereas also said defendants heretofore, to wit, on the ninth day of March in the year eighteen hundred and sixty-three, at the county aforesaid, was indebted unto said plaintiff in a certain other sum of fifteen thousand seven hundred and seventy-eight dollars and sixty-eight cents for the work and labor, care and diligence of said plaintiff, by the said plaintiff before that time done, performed, and bestowed in and about the business of said defendants, and for said defendants, and at their special instance and request; and also for divers material and other necessary things by the said plaintiff before that time found and provided, and used and applied, in and about that work and labor for said defendants, and at their special instance and request; and being so indebted, said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, at the county aforesaid, undertook and then and there faithfully promised said plaintiff to pay him the aforesaid sum of money when they should be thereto afterwards required.

And whereas also said defendants, afterwards, to wit, on the ninth day of March, in the year eighteen hundred and sixty-three, to wit, at the county aforesaid, was indebted to said plaintiff in the
8 further sum of fifteen thousand seven hundred and seventy-eight dollars and sixty-eight cents for the use and occupation of a

certain house and premises, with the appurtenances, of said plaintiff by said defendants, and at their special instance and request, and, by the sufferance and permission of said plaintiff, for a long time before then elapsed, had held and occupied, possessed and enjoyed; and being so indebted, said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook and then and there faithfully promised said plaintiff to pay him said last-mentioned sum of money when they should be thereto afterwards required.

And whereas also said defendants, on the ninth day of March, in the year eighteen hundred and sixty-three, at the county aforesaid, was indebted to said plaintiff in the further sum of fifteen thousand seven hundred and seventy-eight dollars and sixty-eight cents for divers goods, wares, and merchandise before that time sold and delivered by said plaintiff to said defendants, at their special instance and request; and in the further sum of fifteen thousand seven hundred and seventy-eight dollars and sixty-eight cents for work and labor done and performed by said plaintiff for said defendants, at their special instance and request; and in the further sum of fifteen thousand seven hundred and seventy-eight dollars and sixty-eight cents for money by said defendants had and received for the use of said plaintiff; and in
the further sum of fifteen thousand seven hundred and seventy-
9 eight dollars and sixty-eight cents for money lent and advanced by said plaintiff to said defendants, at said defendants' special instance and request; and in the further sum of fifteen thousand seven hundred and seventy-eight dollars and sixty-eight cents for money paid, laid out, and expended for the use of said defendants, at said defendants' special instance and request; and being so indebted, said defendants afterwards, that is to say, on the day and year last aforesaid, at the county aforesaid, in consideration thereof, undertook and then and there faithfully promised said plaintiff to pay him the said several sums of money in this count mentioned, when they should be thereunto afterwards requested.

And whereas said defendants afterwards, that is to say, on the ninth day of March, in the year aforesaid, at the county aforesaid, accounted with said plaintiff of and concerning divers sums of money from the said defendants to the said plaintiff before that time due, owing, then in arrear and unpaid, and upon such accounting the said defendants were then and there found in arrear and indebted to the said plaintiff in the further sum of fifteen thousand seven hundred and seventy-eight $\frac{68}{100}$ dollars; and being so found in arrear and indebted, the said defendants afterwards, to wit, on the day and year last aforesaid, at the countyafore said, in consideration thereof, undertook and then and
there faithfully promised said plaintiff to pay him the said last-
10 mentioned sum of money when they should be thereto afterwards required.

Yet said defendants the said several sums of money herein mentioned, or any part thereof, (although often thereto requested, to wit, on the day and year last aforesaid, at the county aforesaid, and often afterwards,) have not paid, but the same, or any part thereof, to pay

have hitherto wholly refused, and still do refuse, to the damage of the plaintiff in the sum of forty thousand dollars, current money; and therefore he doth bring suit, and so forth.

ASBURY LLOYD,
Att'y for the Plaintiff.

At which mentioned first Monday of May, in the year of our Lord one thousand eight hundred and sixty-three, and the day of the return of the aforegoing writ, come again into the said supreme court the said plaintiff, by his attorney aforesaid; and the marshal of the District of Columbia, to whom the same was directed, makes return thereof to the court, thus indorsed, to wit:

"Cepi. WARD H. LAMON, *Marshal.*"

Rule—plea.

Thereupon the said defendants appear in court here, by Walter D. Davidge, esq., their attorney; whereupon, on motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court
11 here that the said defendants answer to the declaration aforesaid of the said plaintiff, or judgment by the court will be rendered against them in default thereof; the said defendants, by their attorney aforesaid, defend the force and injury, when, &c., and say that they did not assume upon themselves in manner and form as the said plaintiff above against them has declared, and of this they put themselves upon the country, and the said plaintiff in like manner, &c.; therefore let a jury thereon appear before the court here on the third Monday of October next; the same day is given to the said parties then and there, and so forth.

At which said third Monday of October, in the year of our Lord one thousand eight hundred and sixty-three, come again into court here as well the said plaintiff, by his attorney aforesaid, as the said defendants, by their attorney aforesaid; thereupon, with the consent of the parties, by their attorneys aforesaid, and by order of the court, the said cause is further continued until the 3d Monday of January next.

At which mentioned third Monday of January, in the year of our Lord one thousand eight hundred and sixty-four, come again into court here as well the plaintiff, by his attorneys, Messrs. Brent and Norris, as the defendants, by their attorneys, Messrs. Davidge and Kennedy; and thereupon comes a jury of good and lawful men of the District of Columbia, to wit: James W. Colley, Joseph F.
12 Birch, Quincey L. Page, William Douglas, Joseph E. Rawlings, Willard Drake, Archibald White, James F. Halliday, John W. Meade, jr., James Dobbin, Robert W. McHenry, and James Lynch, who being elected by the parties from a panel of twenty of the jurors summoned to attend the court, and sworn to try the issue joined between said parties, after hearing part of the evidence, are respited till to-morrow at the meeting of the court.

MARCH 1ST, 1864.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury who were respited yesterday, and who, after a further hearing of the evidence, are again respited till to-morrow morning at the meeting of the court.

Plaintiff's bill of exceptions No. 1.

MARCH 2D, 1864.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury who were respited yesterday; and thereupon the plaintiff having given evidence to show that he had deposited in the hands of the defendants, in the months of January and February, 1863, sums of money amounting to upwards of $15,000 as and for margin or security for purchases of gold to be made in New York by the defendants for him, and it being admitted that at said dates the defendants were partners, and as such engaged as bankers and brokers, among other things in the business of buying and selling gold for their customers, there rests his case; where-
13 upon the defendants give evidence by various witnesses, to show that the defendants had made various purchases of gold in New York, on account of plaintiff, for which they had put up the requisite margin or security in the hands of Lockwood & Co., their correspondents in New York, but to whom they had not disclosed the name of the plaintiff, or of any of their customers, they making purchases from Lockwood & Co. not only on account of their customers, but on their own individual account, they alone being known in the transactions with Lockwood & Co.; and also evidence tending to show that, on the 26th day of January, 1863, the plaintiff applied to them to purchase gold on his behalf, and was then informed that the terms upon which purchases of gold were made by them in behalf of customers were, that ten per cent. in currency on the amount of gold to be bought should be deposited with the defendants, to be used by them in said purchases; and further, that during the time for which the gold was to be carried, by means of the credit of the defendants, said margin should be kept up, so that defendants should always hold during said time a margin so large as would, added to the market price of gold should the same depreciate, cover, when added to the previous margin and the said depreciated price, the full amount for which the credit of the defendants was to be pledged; and that, for the pledge of their credit, the defendants charged
14 for ten days a commission of one-fourth of one per cent., for fifteen days, one-half of one per cent., and for thirty days a commission of one per cent.; to which terms the plaintiff acceded, and ordered a purchase of $80,000 in gold, and subsequently other purchases on the same terms, except that the margin deposited was, after the month of January, required to be 15 per cent. instead of ten per cent., where purchases were accordingly made by the defendants as ordered. The defendants further give evidence tending to prove that the terms upon which the defendants carried on the business of

buying and selling gold for their customers were those made known to the plaintiff as aforesaid, and that, if the customer failed to keep up his margin, the defendants reserved the right to sell the gold purchased for said customer, or so much thereof as would keep up the margin to the standard agreed on. And the defendants further give evidence by Joseph B. Stewart to prove that the terms upon which the said business was carried on were the subject of repeated conversations at the banking-house of the defendants, at the counter and in their private room in the rear of the banking-house, at some of which conversations, in both places, the witness knows that the plaintiff was present, and that one of the terms so discussed was the necessity of keeping up the margin as aforesaid, and that as the consequence of the failure to do so the gold purchased would be sold
15 as aforesaid, by the defendants; that witness cannot say that the plaintiff heard such conversations, but witness heard them, and the plaintiff was frequently nearer to the parties engaged in such conversations than witness; that such conversations were very frequent before the 25th of February; that witness was at the bank almost daily, bud cannot testify to the times of such conversations; they were too frequent to enable him to do so. Thereupon the defendants offer to prove, by a competent witness, the general course of dealing of brokers engaged in the business of the defendants, in buying and selling gold, and that, according to that course of dealing, whenever the broker was employed to go into the market to buy gold for a customer, who had put up the agreed margin, by using the same and pledging the credit of said broker for the balance requisite for such purchase, the right to sell the gold purchased was reserved to the broker, if the said margin was not kept up as agreed. To so much of which offered *offered* evidence as relates to the alleged right of the broker to sell the plaintiff objects, and the court overrules such objection, and allows the testimony to be given; whereupon the plaintiff excepts, this 2d day of March, 1864.

D. K. CARTTER, *Chief Justice.* [SEAL.]

And thereupon the jury are respited till to-morrow at the meeting of the court.

16 MARCH 3D, 1864.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury who were respited yesterday, and after a further hearing of the evidence the said jury is again respited till Monday, the 7th day of March, instant, at ten o'clock a. m.

SPECIAL TERM, *March 7th*, 1864.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury who were respited on Thursday last, and after hearing the further evidence offered, and the argument of the case by Mr. Norris for the plaintiff and Mr. Kennedy for the defendants, said jury is again respited till to-morrow at the meeting of the court.

Verdict and judgment.

MARCH 8TH, 1864.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury who were respited yesterday, and, after argument of the case by Mr. Davidge for the defendant and Mr. Brent for the plaintiff, and the charge of the court, the said jury, upon their oath say, that the defendants did not assume and undertake as in the declaration is supposed; wherefore it is considered by the court that said defendants go thereof without day and recover against the plaintiff the sum of $ for their costs and charges by them about their defence expended, and that they have execution thereof.

17 *Plaintiff's second exception.*

Be it remembered that, after the ruling of the court stated in the foregoing exception, the defendants gave evidence to show to the extent and in the manner stated in their aforesaid offer.

And thereupon the plaintiff read in evidence the deposition of Legrand Lockwood, with the exhibits therein referred to, and also the copies of the accounts current between Lockwood & Co. and the defendants, as follows:

1. Legrand Lockwood's deposition:

I reside in New York city, and expect to continue my residence here. My firm is Lockwood & Co. Our business is banking and brokerage in stocks, gold, and other securities. I have been engaged in that business over twenty years, and was in January, February, March, and April last. The purchase and sale of stocks, gold, and securities are made at the stock exchange, in the street, and at other places. The prices of gold at the stock exchange are not an accurate test of transactions on the street on the same day, because fluctuations take place suddenly, and without apparent cause.

18 We were, in the months of January, February, March, and April last, correspondents of the Washington banking houses of Rittenhouse, Fant & Co. and Sweeny & Huyck; had been correspondents, for the past three years, with the old firm of Sweeny, Rittenhouse, Fant & Co., and with Sweeny & Huyck from its formation. Neither of said firms disclosed the names of their customers in transmitting orders to us, nor did they disclose whether the transaction were on their individual account or not. We only knew them in the transaction. We generally received orders from them by telegraph, and advised them usually of purchases and sales by telegraph, and also by letter, as we wrote to them every day. I believe we were, during the time specified, in the habit of sending them daily a printed list of transactions made at the stock exchange, of which Mr. Brodhead is secretary; we sent this by mail. We were, at the time above specified, in the habit of telegraphing them at various times

19 during the day, by cipher or otherwise, the price of gold and demand notes, and sometimes stock, based on the market prices. We received telegrams from them during the same period in cipher.

Q. State what you know in regard to the existence of all telegrams

and other communications received by your firm from Sweeny & Huyck during the months referred to and since the formation of said firm.

A. I cannot, at this moment, state as to telegrams, but all letters have been retained. I think Sweeny & Huyck always stated, in their letters, what orders they had sent by telegraph during the day. I don't think Rittenhouse, Fant & Co. always did the same. During the last year a margin of fifteen or twenty per cent. would be considered a sufficient and a fair and reasonable margin for advances made in the purchase of gold and other securities, unless a different margin was agreed upon by the parties. It is the usage among brokers,
20 when they have advanced upon securities, taking a margin, when that margin becomes too low or is absorbed, in the absence of any special agreement, to call upon the party to make good his margin; and if that is not done, then, in their discretion, to sell the security. But it is not customary to dispose of the sceurity till the margin becomes less than five per cent. I never knew of a transaction where the party advancing upon a security agreed, for a bonus, to carry it for a specified time without reference to an additional margin, in case of a decline, and power to sell in case margin was not kept good. In cases where specific charges are made for carrying securities specific times, the usage as to margin above stated prevails, with power to sell upon notice. We made no special variation from the above rule in our dealings with Sweeny & Huyck, except that we held from them a power to sell their gold in certain contingencies. I produce the original hereto annexed, marked exhibit 1, G F B.

21 I cannot personally recollect the different transactions with Sweeny & Huyck; they are duly entered in our books. We had no special agreement with Rittenhouse, Fant & Co. I am a member of the New York stock exchange; Mr. Brodhead is secretary. In purchasing gold the usage is that we receive the coin, or certificates of deposit of gold issued by the incorporated banks. The gold is actually carried around from office to office. Exhibits 2 and 3 are, in the handwriting of Mr. Raymond, exhibits attached to my deposition in the case of Washington *vs.* Rittenhouse, Fant & Co. Mr. Raymond was a clerk in our employ, and wrote these letters by our authority.

LEGRAND LOCKWOOD.

2. The exhibits referred to in the above deposition :

I.

It is agreed that the following shall be the terms of transactions in gold between Lockwood & Co. and Sweeny & Huyck until
22 further notice. Lockwood & Co. will buy gold for cash under 70 per cent. premium, on an agreed margin, charging the usual commissions of $\frac{1}{8}$ per cent. buying and $\frac{1}{8}$ per cent. selling, and $\frac{1}{4}$ per cent. on *on* the average amount carried in excess of $350,000; said charge of $\frac{1}{4}$ per cent. to be made in their monthly accounts, and repeated at the end of each and every month. When the premium reaches 70 per cent. Lockwood & Co. will be at liberty to sell with-

out notice all gold belonging to Sweeny & Huyck, save and except that representing their margin on said gold; or should there be, in the opinion of Lockwood & Co., danger of currency troubles before the premium reaches 70 per cent., they shall be at liberty to sell without notice, so as to protect all parties in interest; but nothing in this agreement shall be construed so as to make it obligatory on Lockwood & Co. to make such sales unless directed to do so by Sweeny & Huyck.

SWEENY & HUYCK.
LOCKWOOD & CO.

N. Y., Feb. 19, 1863.

Exhibit 1, G. F. B.

II.

OFFICE OF LOCKWOOD & CO.,
No. 22 William street, New York, Jan. 27, 1863.

23 Mesrs. Rittenhouse, Fant & Co., Washington:

DEAR SIRS: We have purchased for your ac't 5,000 gold, at 154 R.; 25,000 demands, at 148¼ R.

Yours truly,

LOCKWOOD & CO., per R.

Exhibit 2, G. F. B.

III.

OFFICE OF LOCKWOOD & CO.,
No. 22 William street, New York, March 6, 1863.

Messrs. Rittenhouse, Fant & Co., Washington:

GENT.: We have sold for your ac't this day, R., F. & Co., 100 Rock Isl'd, at 91⅝; H. Washer, 65,000 gold at 152; R., F. & Co., 100 Erie, at 76⅜.

Yours truly,

LOCKWOOD & CO., per R.

Exhibit 3, G. F. B.

3. Copies of the accounts current between Lockwood & Co. and the defendants.

GOLD.

Abstract of purchases for Sweeny & Huyck by Lockwood & Co.

24 From ac't current rend'd to March 19, '63.

1863.				
Jan'y	26.	To cash	20,000 gold, at 150	30,000 00
	27.	To cash	25,000 gold, at 150	37,500 00
	27.	To cash	50,000 gold, at 150¼	75,125 00
	26.	To cash	5,000 gold, at 150¼	7,512 50
	27.	To cash	10,000 gold, at 150¾	15,075 00

1863.				
Jan'y	27.	To cash	15,000 gold, at 151	22,650 00
	27.	To cash	14,000 gold, at 151⅝	21,227 50
	28.	To cash	10,000 gold, at 154	15,400 00
	28.	To cash	70,000 gold, at 154	107,800 00
March	7.	To cash	35,000 gold, at 157¾	35,212 50
	7.	To cash	15,000 gold, at 157⅞	23,681 25
	7.	To cash	25,000 gold, at 158	39,500 00
	7.	To cash	25,000 gold, at 158	39,500 00
	7.	To cash	65,000 gold, at 166	107,900 00
Feb'y	7.	To cash	4,000 gold, at 157	6,280 00
	9.	To cash	none	
	23.	To cash	20,000 gold, at 163¾	32,750 00
	23.	To cash	55,000 gold, at 164	90,200 00
	24.	To cash	25,000 gold, at 164	41,000 00
	26.	To cash	50,000 gold, at 171⅞	85,937 50
	28.	To cash	35,000 gold, at 170	59,500 00
	28.	To cash	5,000 gold, at 170⅞	8,543 75
	28.	To cash	15,000 gold, at 171¼	25,687 50
	28.	To cash	100,000 gold, at 171½	171,500 00
	28.	To cash	8,000 gold, at 171⅓	13,720 00
	28.	To cash	150,000 gold, at 171⅓	257,250 00
March	2.	To cash	40,000 gold, at 171½	68,600 00
	2.	To cash	100,000 gold, at 171	171,000 00
	2.	To cash	50,000 gold, at 171⅜	85,687 50
	3.	To cash	none	
	5.	To cash	40,000 gold, at 166	66,400 00
	5.	To cash	25,000 gold, at 165¼	41,312 50
	5.	To cash	70,000 gold, at 165⅞	116,112 50
	5.	To cash	80,000 gold, at 166	132,800 00
	6.	To cash	20,000 gold, at 157¼	31,450 00
	6.	To cash	500 gold, at 157½	787 50
	6.	To cash	5,000 gold, at 156¼	7,812 50
	6.	To cash	5,000 gold, at 154½	7,725 00
	8.	To cash	nothing	
	7.	To cash	25,000 gold, at 166	41,500 00
	10.	To cash	nothing.	
	13.	To cash	nothing.	
	14.	To cash	nothing.	
	17.	To cash	nothing.	
	18.	To cash	nothing.	
	27.	To cash	nothing.	
1862.				
Oct'r	31.	To cash	nothing.	
1863.				
Jan'y	26.	To cash	none.	

CREDIT.

	27.	By cash	35,000 gold, at 154⅛	53,943 75
	28.	By cash	70,000 gold, at 154⅛	107,887 50
	28.	By cash	130,000 gold, at 154	200,200 00
	22.	By cash	none.	

1863.				
Jan'y	30.	By cash	35,000 gold, at 154	53,900 00
Feb'y	6.	By cash	85,000 gold, at 157	133,450 00
	6.	By cash	40,000 gold, at 157¼	62,900 00
25	6.	By cash	15,000 gold, at 157⅛	23,568 75
	7.	By cash	10,000 gold, at 157⅛	15,712 50
	9.	By cash	none.	
	24.	By cash	100,000 gold, at 164⅞	164,875 00
	24.	By cash	15,000 gold, at 164⅝	24,694 75
	24.	By cash	2,000 gold, at 164¼	3,285 00
	24.	By cash	35,000 gold, at 164⅝	57,618 75
	24.	By cash	10,000 gold, at 164¾	16,475 00
	24.	By cash	10,000 gold, at 165¼	16,525 00
	24.	By cash	5,000 gold, at 165	8,250 00
	25.	By cash	25,000 gold, at 164⅝	41,156 25
	25.	By cash	15,000 gold, at 164¼	24,637 50
	26.	By cash	10,000 gold, at 164¾	16,475 00
	26.	By cash	20,000 gold, at 171¼	34,250 00
	26.	By cash	20,000 gold, at 171½	34,300 00
	27.	By cash	10,000 gold, at 171¼	17,125 00
March	2.	By cash	8,000 gold, at 171⅝	13,730 00
	3.	By cash	35,000 gold, at 171⅛	59,893 75
	4.	By cash	10,000 gold, at 167½	16,750 00
	5.	By cash	10,000 gold, at 168	16,800 00
	5.	By cash	80,000 gold, at 167½	134,000 00
	6.	By cash	70,000 gold, at 156¾	109,725 00
	6.	By cash	80,000 gold, at 157¼	125,800 00
	6.	By cash	10,000 gold, at 150½	15,050 00
	6.	By cash	20,000 gold, at 152½	30,500 00
	6.	By cash	20,000 gold, at 152⅝	30,525 00
	6.	By cash	75,000 gold, at 152⅞	114,656 25
	7.	By cash	85,000 gold, at 152½	129,625 00
	7.	By cash	25,000 gold, at 152⅝	38,156 25
	7.	To cash	55,000 gold, at 152¾	84,000 50
	7.	To cash	20,000 gold, at 152⅞	30,575 00
	7.	To cash	5,000 gold, at 153	7,650 00
	7.	To cash	10,000 gold, at 153¾	15,375 00
	8.	To cash	nothing.	
	9.	To cash	nothing.	
	10.	To cash	10,000 gold, at 160⅛	16,012 50
	10.	To cash	10,500 gold, at 160	16,800 00
	10.	To cash	25,000 gold, at 159	39,750 00
	10.	To cash	14,500 gold, at 158⅛	22,928 13
	10.	To cash	30,000 gold, at 158½	47,550 00
	10.	To cash	30,000 gold, at 158¼	47,475 00
	10.	To cash	5,000 gold, at 158⅜	7,906 25
	13.	To cash	none.	
	14.	To cash	none.	
	17.	To cash	none.	

From ac't rend'd May 1:

18.	To cash	10,000 gold, at 153⅝	15,362 50
18.	To cash	10,000 gold, at 153½	15,350 00
19.	To cash	20,000 gold, at 153½	30,700 00
19.	To cash	20,000 gold, at 153⅝	30,725 00
19.	To cash	40,000 gold, at 153¾	61,500 00
27.	To cash	none.	

Ac't rend'd Dec. 24, 1862:

1862.			
Nov.	1. To cash	20,000 gold, at 129¾	25,950 00

26 And the plaintiff further read in evidence a letter written by the defendants to him, and dated 27 April, 1863, made a part hereof, as follows :

BANKING-HOUSE OF SWEENY & HUYCK,
No. 547 *Seventh Street, Washington, D. C., April* 27*th*, 1863.

Columbus Alexander:

DEAR SIR: Mr. Asbury Lloyd, acting as your attorney, called upon us several days since, at your request, (as he informed us,) and obtained an abstract of your account with us as your agents in the purchase of gold. This account was promptly furnished by us to him, and we presume you examined the same and found it to be correct.

If any errors have occurred in any of our calculations as to interest, &c., if you will be pleased to point them out to us, it will afford us great pleasure to have them corrected. The balance found to be due us is $4,562 37, with interest thereon from the 18th March last. You will oblige us by paying the same immediately, as we need the money very much at the present time.

Yours, resp'y,

SWEENY & HUYCK.

27 And also read in evidence two accounts furnished to him by the defendants, made a part hereof, as follows :

Bought for ac't C. Alexander, 80,000 gold, at 154		$123,200 00
¼ per cent. com'n		200 00
2 telegrams		1 06
		123,401 06
¼ com'n selling		200 00
10 days' int., at 7 per cent		239 60
2 telegrams		1 06
		123,841 72
Sold :		
40,000 at 157	$62,800	
40,000 at 157¼	62,900	
		125,700 00
		1,858 28

Feb'y 6, 1863.

Statement of purchase and sale of gold for ac't of C. Alexander.

Purchased and sold through Lockwood & Co., New York.

1863.				
January	27.	To 80,000 sold at 154		$123,200 00
	27.	To ¼ com		200 00
	27.	To 2 telegrams		1 06
Feb'y	5.	To ¼ com. on 80,000 sold		200 00
	5.	To 10 days' int.		239 60
	5.	To 2 telegrams		1 06
				123,841 72
Feb'y	5.	By 40,000 gold, at 157	$62,800	
	5.	By 40,000 gold, at 157¼	62,900	
				125,700 00
		Profits		1,858 28
		Margin trs. note, Jan'y 27		8,000 00
				9,858 28
Feb'y	23.	To 75,000 gold, at 172⅜, 10 days		$129,281 25
	23.	To ¼ com		187 50
	23.	To 2 telegrams		1 06
	27.	To 25,000 gold, at 171¾, 10 days		42,937 50
	27.	To ¼ com		62 50
	27.	To 2 telegrams		1 06
March	18.	To ¼ on $100,000 sold		250 00
	18.	To 20 days on cash of 75,000, less margin.		487 64
	18.	To 19 days on cash of 25,000, less margin		158 64
				173,367 15
March	18.	By 30,000 gold, at 153⅝	$46,087 50	
	18.	By 30,000 gold, at 153½	46,050 00	
	18.	By 40,000 gold, at 153¾	61,500 00	
				153,637 50
		Loss		19,729 65
		By margin, gold, (Feb. 27,)	$3,453 00	
		By premium on do. at 153¾	1,856 00	
				5,309 00
				14,420 65
		Balance margin and profits brought down		9,858 28
				4,562 37

And gave in evidence by a competent witness, Asbury Lloyd, that on the 18th day of April, 1863, after repeated applications to the defendants, he obtained from them the last of said accounts in date;

and that shortly after obtaining said account, he saw the de-
28 fendant, Huyck, who showed him a book in which, to the best of the witness's recollection, the item charged in said account as of the 23d February, 1863, was entered so as to correspond in date and other particulars with the entry of said item in said account. But witness's examination of said book was more particularly confined to the amount charged in said books for the purchase of said 75,000 of gold.

And the plaintiff further proved that, on the 14th March, 1863, the price of gold had materially enhanced in the market, and the same was worth on that day 157¾ per $100 of gold, and on the 6th March, 1863, it was worth $150 per each $100 of gold; and on the 4th March, 1863, it was worth $165 per each $100 of gold. Then rested.

And thereupon the defendants, to rebut said evidence, read in evidence the depositions and return thereof made by G. F. Betts, commissioner, February, 1864, made a part of hereof, as follows:

Deposition of Luther C. Challiss.

I reside at Atchison, Kansas. At present I am sojourning in New York city.

Q. Do you know the parties to this cause? And if so, how long have you known them?

A. About fourteen months. I have known all the parties. I first met all of them in December, 1862. Perhaps I did not meet Mr. Alexander till January, 1863. The others I met in December, 1862. I met all of them at the banking-house of Messrs. Sweeny & Huyck, at Washington, D. C.

Q. Have you any recollection of being present at a conversation between the plaintiff and the defendants, or either of them, late in the winter of 1862,–'3, or early in the spring of 1863, in relation to the plaintiff putting up and keeping up the margin on gold purchased by the defendants in his behalf, and which they were carrying? If yea, state all that passed at said conversation.

A. I was present at a conversation between said parties, on the 6th day of March, 1863. I mean between Mr. Huyck and Mr. Alexander, the Mr. Huyck who is one of the above-named defend-
ants. Mr. Huyck had a despatch from Lockwood & Co., of
29 New York, requesting him to forward more margin, which despatch he showed me. I then heard Mr. Huyck request Mr. Alexander to give him more margin for his account with his house—more margin for the gold he was carrying—otherwise he would be forced to sell it. Mr. Alexander stated that if he put up additional margin that too might be lost. Mr. Huyck stated that he didn't believe gold would go any lower, but if it did, in his opinion, it would come back again. Mr. Alexander stated that he didn't feel like risking anything more to hold it. I think Mr. Alexander left the house then. This is all I recollect.

Q. State the reasons which impressed this conversation on your mind, and especially such as to enable you to fix the date of it?

A. Messrs. Sweeny & Huyck were carrying for me a large amount of gold. The act of Congress in relation to speculating in gold was passed on the night of the 3d of March. Gold broke the following day, the 4th—I mean the price went down. The despatch that Mr. Huyck had from Messrs. Lockwood, I recollect, was the second day after the break in the price of gold. He showed me the despatch, and required of me additional margin upon the gold he was carrying.

Q. What became of your gold?

A. A portion of mine was sold by Sweeny & Huyck. I can't remember what portion; and I paid the loss to Sweeny & Huyck.

30 Q. State where the conversation of the 6th March above referred to took place?

A. In the banking-house of Sweeny & Huyck, at the counter, Mr. Huyck on the inside, Mr. Alexander and I on the outside.

L. C. CHALLISS.

Cross-examined by Mr. Brent:

Kansas was my residence in March, 1863. I was sojourning in Washington. I staid in Washington three months at that time. I had an account with Sweeny; had no contract with him in regard to gold operations, other than the purchases I have spoken of. He showed me one telegram—Huyck showed it to me. He showed me all despatches, as I requested, when he bought gold for me. I hadn't then the key to the telegram cipher *then*, but I considered it public; could get it; all brokers had them. I can fix the date of the conversation between Huyck and Alexander in another way—by the sale of my own stocks—by my account, which I have in my room in my trunk. Huyck called on me at the same time as on Alexander for more margin. Instead of giving him the margin additional I ordered him *him* to sell stocks which they held for me, which would strengthen the margin on the gold. He ordered sale immediately by telegraph, and the sale is dated March 6 in my account rendered to me

31 by Sweeny & Huyck. Account was made up by Sweeny & Huyck, and contains no memorandum by me thereupon.

(Mr. Brent objects to all that this witness states in regard to fixing the date by said account.)

(The above answer was given by the witness in reply to a question by Mr. Brent, whether he had any other way of fixing the date of the conversation between Huyck and Alexander than he had already given.

The objection of Mr. Brent was not made till the answer was given and rendered as above.)

It was generally understood before Congress passed the act that it would be passed, but the dreaded fall in gold was not till the 4th of March, though it had fluctuated before.

L. C. CHALLISS.

Sworn to before me this 27th day of February, 1864.

GEO. F. BETTS, *U. S. Com'r.*

Deposition of James M. Hartshorn.

I reside in New York; in January, February, and March, 1863, was a partner with Lockwood & Co., and attended stock exchange, and did buying and selling of stocks and gold for the concern. I did not confine myself to the Exchange in buying and selling gold, but before board hours, between boards, and after board hours I bought and sold on the street. During these months Lockwood &
Co. did business for Sweeny & Huyck. We always bought
32 the lowest we could for our customers, and sold the highest
we could. I was with them 13 years. We never wronged a customer in any of the dealings with them. During the same day price often fluctuates considerably during the day. Transactions on the street are not recorded; prices in the board are merely indications of prices at that moment. The operations on the street during those months were enormous, particularly in gold. Whenever I had an order I went out and executed it, and as soon as I came in entered it myself, or had a clerk enter it under my supervision, and saw it was correctly entered. The transactions of each day were entered on same day, usually within an hour. The accounts current do not show dates of purchase or sale, but only dates of settlement, which may be different. In stock matters *R* (and also in gold) means payable the following day; it signifies "the regular way." *C* means cash by 3 o'clock the same day. *B* with a number after it, means that the buyer has a right to settle at any time within the number of days named. *S* with a number after it, signifies the same of time on
the part of the seller. I left Lockwood & Co. May 1st, 1863.
33 Our purchase and sales books show the dates of the purchases
and sales. The three books now shown to me are the original books of purchases and sales of Lockwood & Co. during the months of January, February, and March, 1863.

JAMES M. HARTSHORN.

Cross-examination waived by Mr. Brent.

Sworn to before me this 27th day of February, 1864.

GEO. F. BETTS, *U. S. Com'r.*

Deposition of James S. Wells.

I reside in Brooklyn, in the State of New York; am clerk with Lockwood & Co., stock brokers and bankers, 22 William street, in the city of New York. I am their chief clerk; have been since 1st of September last; was their book-keeper from January previous. I was examined as a witness on behalf of the plaintiff on or about the 16th of October last. Since I have been in the employ of Lockwood & Co. it has been their custom and usage, uniform so far as I know, to keep a record of all telegrams sent by them to the defendants and others in relation to the purchase and sale of gold.

Defendants' Ex. No. 1, G. F. B., being shown to witness, the
34 same being marked also "No. 2, equity, Alexander *vs.*
Sweeny & Huyck," (all exhibits so marked are not returned with this deposition, by consent of counsel:) I have examined the

telegram record of Lockwood & Co., and find this Ex. No. 1 corresponds with an entry in that record of that date. It is an exact copy.

(Obj. to reference to copy of Lockwood's books, and requires production of same.)

Def'ts' Ex. No. 2, G. F. B., (marked also "Def's No. 3, equity, Alexander *vs.* Sweeny & Huyck,") being shown to witness: This agrees substantially with the original record of Lockwood & Co., I believe exactly.

Def'ts' Ex. No. 3, G. F. B., (marked also "Def'ts' No. 4, equity, Alexander *vs.* Sweeny & Huyck:") Signature to this is Mr. Lockwood's own. It is difficult to distinguish the handwriting of Mr. Raymond from that of Mr. Lockwood, as to the body of the letter; that is either Mr. Lockwood's or Raymond's. Raymond was at that time Lockwood's corresponding and telegram clerk. The book now produced is the record of telegrams sent by Lockwood & Co. to the defendants and others—to their customers generally. At page 293 the entry corresponds exactly with def'ts' Ex. No. 1, G. F. B. At page 293 the entry corresponds exactly in the def'ts' Ex. No. 2, G. F. B.

Def'ts' Ex. No. 4, G. F. B., (marked also Def'ts' No. 10
35 equity, Alexander *vs.* Sweeny & Huyck,) shown to witness; def'ts' Ex. No. 5, G. F. B., (marked also Def'ts' No. 9, equity, Alexander *vs.* Sweeny & Huyck,) shown to witness: These two exhibits correspond exactly with entries in the record at pages 392 and 394. Def'ts' Ex. No. 6, G. F. B., (marked also Def'ts' No. 11, equity, Alexander *vs.* Sweeny & Huyck,) is in Raymond's handwriting, the telegram and corresponding clerk described above. Def'ts' Ex. No. 7, G. F. B., (marked also Def'ts' No. 15, equity, Alexander *vs.* Sweeny & Huyck,) is an exact copy of an entry on page 529 of the record. Def'ts' Ex. No. 8, G. F. B., (marked also Def'ts' No. 16, equity, Alexander *vs.* Sweeny & Huyck,) is in Raymond's writing. Def'ts' Ex. No. 9, G. F. B., (marked also Def'ts' No. 21, equity, Alexander *vs.* Sweeny & Huyck,) is an exact copy of an entry of that date on page 42, 8th vol. of record. The book above referred to is volume 7. Def'ts' Ex. No. 19, G. F. B., (marked also Def'ts' No. 22, equity, Alexander *vs.* Sweeny & Huyck,) is in Raymond's handwriting. Def'ts' Ex. No. 11, G. F. B., (marked also Def'ts' No. 23, equity, Alexander *vs.* Sweeny & Huyck;) Def't's Ex. No. 12, G. F. B., (marked also Def'ts' No. 29, equity, Alexander *vs.* Sweeny & Huyck;) ef'ts' Ex. No. 13, G. F. B., (marked also Def'ts' No. 28, equity, Alexander *vs.* Sweeny & Huyck;) Def'ts' Ex. No. 14, G. F. B., (marked also Def'ts' No. 31, equity, Alexander *vs.* Sweeny &
36 Huyck;) def'ts' Ex. No. 15, G. F. B., (marked also Def'ts' Ex. No. 30, equity, Alexander *vs.* Sweeny & Huyck.) Above five are correct copies of entries of corresponding dates in the record, except that in No. 13, instead of "Clinton," there records "Cli," and "five" is written on after copy, apparently correction to complete copy; and that in No. 14, instead of "Cherry," there reads "Ch.," apparently the result of imperfect copy, from the folding of a leaf in the copy-press. Def'ts' Ex. No. 16, G. F. B., (marked also

Def't's No. 32, equity, Alexander *vs.* Sweeny & Huyck,) is in Raymond's handwriting. Def'ts' Ex. No. 17, G. F. B., (marked also Def'ts No. 34, equity, Alexander *vs.* Sweeny & Huyck,) is an exact copy of entry of corresponding date in the record. Def'ts' Ex. No. 18, G. F. B., (marked also Def'ts' No. 36, equity, Alexander *vs.* Sweeny & Huyck,) is in Raymond's handwriting. It was Raymond's duty to report by telegram or letter, as circumstances required, the purchase or sales for account of customers, which telegrams were copied in these books now produced, and immediately sent to the telegraph office. These books are what I have called here our record. The copies are taken by the letter-press from the original telegram. It was Raymond's duty to advise of purchases and
37 sales by letters, which letters were copied by press in letter books in regular dates, and mailed by next mail after the writing; that was the regular course of business. Letters were put in a box, and boy left for the post office at regular hours just previous to closing of every mail, taking all that were in the box. Def'ts' Ex. No. 19, G. F. B., is a correct abstract of the purchases of gold for account of Sweeny & Huyck by Lockwood & Co., from January 26th to February 27, 1863, both dates inclusive, compared by me with the book of original entry. Def'ts' Ex. No. 20, G. F. B., is a correct abstract of the sales of gold made for account of Sweeny & Huyck by Lockwood & Co., from February 5th to March 18th, 1863, both dates inclusive, compared by me with the books of original entry.

Q. Look at Exhibits 19, 20, 102, and 138, annexed to your deposition now shown you, taken before the present commissioner on the 16th of October last, and state whether said exhibits set forth correctly the purchases and sales of Lockwood & Co. on account of the defendants; and if there be errors and omissions, in what the same consist.

A. They only represent the purchases and sales on particular days, omitting a large portion of the transactions occurring within the extreme dates. I presume they are correct for the dates to which
38 they refer. Pl'ff's Exhibits 19 and 20 are in my handwriting. There is no entry in them of purchases of gold on February 25. It was not asked for, which is the reason it does not appear there. Mr. Alexander applied to me for that statement; he stated the dates for which he wanted the transactions given. Pl'ff's Exhibit 102 is in my handwriting. G. F. B., a purchaser of gold on account of defendants. G. F. B., on Feb'y 25, is mentioned there for $50,000 at 171⅞. All the purchases of gold made defendants on that day were not mentioned in that exhibit. I presume the reason is that it was not one of the dates specially asked for, and so was not completed. Pl'ff's Exhibit 138 is not in my handwriting; it is in Mr. Phinney's; he is now on the Mississippi river. It is not an extract from the book of purchases and sales, but an extract from the accounts current, giving dates of settlement, not of purchase or sale. The original purchase and sales books show the dates when the transactions are actually made. The accounts current show the days on which delivery is made, and the transaction is settled by cash. I believe I pointed

out that distinction in my former deposition. The books of purchase and sale were produced when I gave that deposition before the co
missioner. In my deposition formerly made, when I report
39 pl'ff's Ex. 101, I am made the words "140 on telegraphic," &c. means "140, 000 dollars in gold purchased on telegraphic," &c. I wish now to correct that by saying that the word purchased should have been "sold." The rate at foot of Ex. 101 refers unquestionably to a portion of the sales therein reported. By referring to def'ts' Ex. No. 19 I find that the purchases of gold on account of defendants made on the 23d day of February amounted in the aggregate to $100,000.

Cross-examined by Mr. Brent:

I don't refer to any pencil marks upon the exhibits as being copies of entries in the record of telegrams of Lockwood & Co., or as being part G. F. B. of letters sent. In Ex. of pl'ff 138 the two items under date of Feb'y 23 of $20,000 and $55,000 were purchased on that day at the prices charged, were part of the $100,000 purchased on that day. You will probably find the other $25,000 under date of Feb'y 24, at least that is the date that it was due, but I can't tell whether it was settled for on that day without referring to the account current. I find the item there, and have no doubt it is the same $25,000 at 164. The letter to Sweeny & Huyck, of Feb'y 23d, states (as well as I can recollect,) when advising them of our purchase of the
$100,000, that it was in pursuance of verbal orders received
40 from Mr. Sweeny, in this city, I presume.

[The original book of entry of purchases and sales above referred to having been produced and exhibited to the plaintiff and his counsel, it is agreed that dfts' Exhibits No. 19 and 20, G. F. B., are correct transcripts from said books, and it is further agreed that in said books, in the item under date Feb'y 25, 1863, $20,000 gold at 172, charged against Sweeny & Huyck as a purchase, the words "$20,000, gold, 172," are written over an erasure, and that under same date the item "60,000, gold, 171¾," charged against Sweeny & Huyck, has the figure "6," G. F. B., written over some other figure. And it is further agreed that in said books the first-mentioned item is carried through several columns designating from whom purchased, and on what account; and also the aggregate amount *and also the aggregate amount*, and that the aggregate amount opposite said entry of $20,000, at 172, is $34,400, in which said columns there is, E. F. B., no name nor alteration; and, further, that through the columns through which the entry of $60,000 gold is carried, there is no erasure nor alteration.]

Direct examination resumed:

There is, above the entry "$20,000 in gold, 172," in the
41 books, an entry of "50 Mich. South." at 61¾, which appears to have been erroneously repeated on the next line, then erased and "20,000, gold, 172," being the next purchase in order, to have been entered there. The extension in dollars in which there has been no erasure is 34,400, and agrees with the 20,000 gold at 172;

and I know that this 20,000 formed an item charged to the account of Sweeny & Huyck, in the regular course at that time. In the other item of "60,000," it seems erroneously to have been entered "$40,000" at first. The item above it is "$40,000," and it would appear to have been an erroneous repetition of that. The extension of that 60,000 at 171¾ is 103,050, and is correct without any erasure; it also appears as 60,000 in their account in due course.

Re-cross:

I have no other recollection of the matter than that I compared this with the account current when I made it out, and with the cash-book at that time; I have no recollection of noticing the erasures at the time.

Re-direct:

The book now is the letter-press copies of letters sent by Lockwood & Co. It contains the copy of the letters of Feb'y 23d, 1863, from Lockwood & Co. to Sweeny & Huyck, referred to in my testimony.

Deft's Ex. No. 21, G. F. B., is a correct copy of this letter.

42 The original should be in the hands of Sweeny & Huyck.

JAS. S. WELLS.

Sworn to before me this 27th day of Feb'y, 1864.

GEO. F. BETTS, *U. S. Comm'r.*

Deposition of Cambridge Livingston.

I reside in the city of New York; I am secretary of the American Telegraph Company.

It is agreed that the 13 papers marked as follows, No. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, G. F. B., are correct copies of telegrams sent by Lockwood & Co. to Sweeny & Huyck, at the times they respectively bear date, and that said copies shall have the same force and effect as the originals if produced and duly proved.

GEO. F. BETTS, *U. S. Comm'r.*

It is further agreed between the counsel for the respective parties, that any exhibit referred to in the foregoing depositions on behalf of the defendants, which may be on file in the equity suit of Alexander *vs.* Sweeny & Huyck, or attached to the plaintiff's depositions in this present case, may be considered as attached to these depositions, and used and refered to in the like effect as if so attached. And

43 also that these depositions may be handed by the commissioner to Mr. Davidge, counsel for the defendants, to be by him carried to Washington.

GEO. F. BETTS, *U. S. Comm'r.*

Defts' Ex. No. 19, *G. F. B.—Purchases gold for ac't of Sweeny & Huyck.*

1863				
Jan. 26,	20,000 gold, at	150		C.
	25,000 gold, at	150		R.
	50,000 gold, at	150¼		R.
	5,000 gold, at	150¼		C.
	10,000 gold, at	150¾		R.
	5,000 gold, at	151		R.
	10,000 gold, at	151		R.
	10,000 gold, at	151⅜		R.
	4.000 gold, at	151⅝		R.
Jan. 27,	25,000 gold, at	154		R.
	10,000 gold, at	154	S. 3.	
	10.000 gold, at	154		R.
	35,000 gold, at	154		R.
Jan. 28,	5,000 gold, at	148 & 5d.		C.
Jan. 29,	10,000 gold, at	154½		R.
Jan. 30,	20,000 gold, at	156		C.
	10,000 gold, at	157		C.
	25,000 gold, at	157		R.
	5,000 gold, at	156⅞		R.
	5,000 gold, at	157¼		R.
[44]	25,000 gold, at	157¼		R.
	50,000 gold, at	157⅜		R.
	5,000 gold, at	157⅝		C.
	10,000 gold, at	157½		C.
	100.000 gold, at	157¼		R.
	50,000 gold, at	157⅝		R.
	20,000 gold, at	158		R.
	10,000 gold, at	157⅞		C.
	7,000 gold, at	157½		R.
	15,000 gold, at	158¼		R.
	20,000 gold, at	158¼		R.
	20,000 gold, at	158½		R.
	50,000 gold, at	158¼		R.
	3,000 gold, at	158½		R.
Jan. 31,	10,000 gold, at	159	B. 3.	
Feb. 3,	15,000 gold, at	154½		R.
	10,000 gold, at	155		R.
	45,000 gold, at	155		R.
	8,000 gold, at	155		R.
	10,000 gold, at	155⅝		R.
	10,000 gold, at	155⅝		R.
	20,000 gold, at	155⅝		R.
	10,000 gold, at	155¼		R.
	10,000 gold, at	155½		R.
	5,000 gold, at	155½		R.
	10,000 gold, at	155½		R.
	10,000 gold, at	155¼		R.
[45]	10,000 gold, at	155½		R.
	10,000 gold, at	155⅝		R.
Feb. 4,	10,000 gold, at	157		R.
Feb. 5,	35,000 gold, at	157¼	B. 30.	
	15,000 gold, at	157⅞	B. 30.	
	25,000 gold, at	158	B. 30.	
	25,000 gold, at	158	B. 30.	
Feb. 6,	4,000 gold, at	157		R.
Feb. 11,	50,000 gold, at	156		R.
	55,000 gold, at	154¾		R.
	10,000 gold, at	154⅞		R.
	35,000 gold, at	155		R.
Feb. 12,	25,000 gold, at	154½		R.
Feb. 13,	10,000 gold, at	155½		R.
	60,000 gold, at	155¾		R.

1863.				
	44,000 gold, at	155⅞		R.
Feb. 16,	40,000 gold, at	157½		R.
	10,000 gold, at	157⅝		R.
	20,000 gold, at	157½		R.
Feb. 17,	90,000 gold, at	158¾		R.
	10,000 gold, at	158¾	S. 3.	
Feb. 18,	5,000 gold, at	161		R.
	5,000 gold, at	161½		R.
Feb. 19,	10,000 gold, at	163¾		R.
	20,000 gold, at	162½		R.
	10,000 gold, at	162½		C.
	20,000 gold, at	162½		R.
	35,000 gold, at	162⅝		R.
[46]	5,000 gold, at	162⅝		C.
	30,000 gold, at	162¾		R.
Feb. 20,	15,000 gold, at	162½	B. 3.	
Feb. 21,	25,000 gold, at	162⅝		R.
	20,000 gold, at	162¾		R.
	10,000 gold, at	162½		R.
	20,000 gold, at	162½	S. 3.	
	10,000 gold, at	162¾	S. 3.	
	35,000 gold, at	162⅞		R.
	10,000 gold, at	162½		R.
	5,000 gold, at	162⅝		R.
Feb. 23,	20,000 gold, at	163¾		C.
	55,000 gold, at	164		C.
	25,000 gold, at	164		R.
Feb. 24,	100,000 gold, at	169¾		R.
	50,000 gold, at	169¾		R.
	10,000 gold, at	168		R.
	20,000 gold, at	170	S. 3.	
	20,000 gold, at	170		R.
	10,000 gold, at	170½	S. 3.	
	10,000 gold, at	170¾		R.
	30,000 gold, at	171	S. 3.	
	5,000 gold, at	171		R.
	25,000 gold, at	171	B. 3.	
	10,000 gold, at	171		R.
Feb. 25,	50,000 gold, at	171½		R.
	20,000 gold, at	171½		R.
	20,000 gold, at	172		R.
[47]	75,000 gold, at	172½		R.
	100,000 gold, at	171¾		R.
	25,000 gold, at	173	B. 30.	
	50,000 gold, at	173½	B. 30.	
	25,000 gold, at	173⅜	B. 30.	
Feb. 26,	5,000 gold, at	171¾	B. 3.	
	15,000 gold, at	171¾		R.
	50,000 gold, at	171½		R.
	30,000 gold, at	171¾		R.
	10,000 gold, at	171¾		R.
	5,000 gold, at	171¾		R.
	5,000 gold, at	171¾		R.
Feb. 27,	35,000 gold, at	170		R.
	5,000 gold, at	170½		R.
	15,000 gold, at	171½		R.
	100,000 gold, at	171	B. 3.	
	50,000 gold, at	171⅜	S. 3.	
	100,000 gold, at	171½		R.
	40,000 gold, at	171½	B. 3.	
	8,000 gold, at	171½		R.
	150,000 gold, at	171½		R.

Defts' Ex. No. 20, *G. F. B.—Sales of gold for ac't of Sweeny & Huyck.*

1863				1863.			
Feb. 5,	85,000 gold, at	157	R.	Feb. 26,	200,000 gold, at	171¼	R.
	40,000 gold, at	157⅛	R.	Feb. 28,	8,000 gold, at	171⅛	R.
Feb. 6,	15,000 gold, at	157⅛	C.	Mar. 2,	10,000 gold, at	171⅛	R.
[48]	10,000 gold, at	157½	R.	[49]	25,000 gold, at	171½	R.
Feb. 12,	4,000 gold, at	154½	R.	Mar. 3,	35,000 gold, at	171½	C.
Feb. 14,	30,000 gold, at	155⅛	R.	Mar. 4,	10,000 gold, at	168	R.
Feb. 18,	93,500 gold, at	160½	R.		80,000 gold, at	167½	R.
	50,000 gold, at	161	R.		10,000 gold, at	167½	C.
	50,000 gold, at	161½	R.	Mar. 5,	70,000 gold, at	156⅛	R.
	65,000 gold, at	161⅝	R.		80,000 gold, at	157½	R.
	40,000 gold, at	161⅛	R.	Mar. 6,	10,000 gold, at	150½	C.
	2,000 gold, at	161⅛	R.		15,000 gold, at	152½	R.
Feb. 19,	50,000 gold, at	163⅛	R.		20,000 gold, at	152½	C.
Feb. 20,	5,000 gold, at	162⅛	R.		20,000 gold, at	152⅛	C.
	100,000 gold, at	163½	R.		25,000 gold, at	152⅛	R.
Feb. 21,	100,000 gold, at	162½	R.		70,000 gold, at	152½	R.
	65,000 gold, at	162⅛	R.	J. S. W.	55,000 gold, at	152⅛	R.
	35,000 gold, at	162½	R.		20,000 gold, at	152½	R.
Feb. 23,	100,000 gold, at	164⅞	R.	J. S. W.	75,000 gold, at	152⅞	C.
	10,000 gold, at	164⅛	B. 3.		10,000 gold, at	153⅛	R.
	40,000 gold, at	164⅝	R.	Mar. 10,	10,000 gold, at	160½	R.
	15,000 gold, at	164½	2 days.		10,500 gold, at	160	R.
	2,000 gold, at	164½	R.		25,000 gold, at	159	R.
	35,000 gold, at	164⅝	R.		4,500 gold, at	158½	R.
	10,000 gold, at	164⅛	R.		30,000 gold, at	158½	R.
	10,000 gold, at	165½	R.		30,000 gold, at	158½	R.
	5,000 gold, at	165	R.		15,000 gold, at	158½	R.
Feb. 24,	95,000 gold, at	171½	R.	Mar. 18,	20,000 gold, at	153½	R.
	65,000 gold, at	171½	R.		10,000 gold, at	153⅛	C.
	5,000 gold, at	171	R.		10,000 gold, at	153½	C.
	50,000 gold, at	170	R.		20,000 gold, at	153⅛	R.
Feb. 25,	30,000 gold, at	171½	R.		40,000 gold, at	153⅛	R.
	20,000 gold, at	171½	R.		5,000 gold, at	153	R.
	50,000 gold, at	171½	R.				

50 *Defendants' Exhibit No.* 22, *G. F. B., dated Jan'y* 27, 1863.

To Sweeny & Huyck, Washington:
Sold fifty-five gold, Green; bought eighty gold, Four; sold fifteen (15) demands. Ritner will execute balance.

LOCKWOOD & CO.

Defendants' Exhibit No. 23, *G. F. B., dated March* 6, 1863.

To Sweeny & Huyck, Wash'n:
The sales of yesterday do not furnish sufficient margin. Gold fifty.

LOCKWOOD & CO.

Defendants' Exhibit No. 24, *G. F. B., dated March* 6, 1863.

To Sweeny & Huyck, Wash'n:
Sold ten gold, Weaver.

LOCKWOOD & CO.

Defendants' Exhibit No. 25, *G. F. B., dated March* 6, 1863.

To Sweeny & Huyck, Wash'n:
Sold fifty-five gold, Clinton; five at three ninety-five, Crown.

LOCKWOOD & CO.

51 *Defendants' Exhibit No.* 26, *G. F. B., dated March* 6, 1863.

To Sweeny & Huyck, Wash'n:
Sold hundred five gold, Cherry; forty-five, Church.
LOCKWOOD & CO.

Defendants' Exhibit No. 27, *G. F. B., dated March* 6, 1863.

To Sweeny & Huyck, Wash'n:
Sold ten gold, Farr; two southern, nine.
LOCKWOOD & CO.

Defendants' Exhibit No. 28, *G. F. B., dated March* 18, 1863.

To Sweeny & Huyck, Wash'n:
Sold thirty (30) coupons, Franklin; thirty, (30,) Fayette; by order of Mr. Sweeny.
LOCKWOOD & CO.

Defendants' Exhibit No. 29, *G. F. B.*

To Sweeny & Huyck, Wash'n:
Sold forty (40) coupons, Farr; by order of Mr. Sweeny.
LOCKWOOD & CO.

Defendants' Exhibit No. 30, *G. F. B., dated Feb'y 5th,* 1863.

To Sweeny & Huyck, Wash'n:
Sold eighty-five gold Seven-Twenty demands; George will execute balance.
LOCKWOOD & CO.

52 *Defendants' Exhibit No.* 31, *G. F. B.*

NEW YORK, *Jan'y* 27, 1863.

Sweeny & Huyck, Wash'n:
Your order to buy eighty gold did not arrive till six, thereby too late for market; will execute now; price, George.
LOCKWOOD & CO.

Defendants' Exhibit No. 32, *G. F. B.*

N. Y., *Feb'y* 5, 1863.

Sweeny & Huyck, Wash'n:

Sold forty, gold; paid twenty-two; demands five.

LOCKWOOD & CO.

Defendants' Exhibit No. 33, *G. F. B.*

N. Y., *Feb'y* 25, '63.

Sweeny & Huyck, Wash'n:

Bought fifty gold, Button; twenty at two seventy-five, Chestnut.

LOCKWOOD & CO.

Defendants' Exhibit No. 34 *G. F. B.*

NEW YORK, *Feb'y* 27*th*, '63.

Sweeny & Huyck, Wash'n:

Bought fifty gold, bearer; forty-eight, bond.

LOCKWOOD & CO.

53 *Evidence offered by defendants.*

In addition to the evidence set out in the plaintiff's first bill of exceptions, made part hereof, the defendants offered evidence to prove that in the months of January, February, and March, 1863, they, as part of their ordinary business of brokers, bought and sold gold on commission in the city of New York for their customers, and carried the same in said city agreeably to the usage for the purchase, sale, and carriage of gold, and that according to such usage; and gave evidence to show that such usage was known to plaintiff, which was uniform. It was incumbent on the customer to keep up the margin agreed on his purchase during the period for which his gold was to be carried, and that if during said period the margin was at any time either absorbed or diminished by the depreciation of the market value of the gold so carried, then it was the right and privilege of the broker, under said usage, to require the customer to restore or re-establish such margin; and if, after being so required, he failed or refused to make such margin good by a further deposit with the broker of a sum equal to the depreciation of the then market value of gold, that

54 it was the further right and privilege of the broker under said usage, to order an immediate sale of said gold either at the board of brokers or stock exchange, or on the street; and that, at the end of the period for which the gold was to be carried by the broker, it was the further right or privilege of the broker to sell the same, unless before said sale the customer should pay the balance due by him on the purchase of said gold, with the said commission for

carrying the same. And that at any time within the period for which the gold was to be carried, or after such period and before the sale of the gold, it was competent for the customer, on payment of the balance due by him on the purchase of said gold, with the commission for carrying, to have the gold purchased delivered to him. The defendants further offered evidence to prove that the plaintiff, on the 25th of February, 1863, employed them to purchase in his behalf, in said city of New York, $75,000 in gold, and on the 27th of the same month, $25,000 in gold; for said purchases, paid to the defendants in currency, as a margin, 15 per cent. of the fair value of said gold, which margin was to be used in said purchases, and for the balance of the cost of said gold the defendants were to pledge their credit, and that the defendants agreed to carry said gold so purchased for the period of ten days after the said respective dates of purchase, subject, however, to the evidence of the usage aforesaid, and that the undertaking of the defendants so to purchase and carry was with reference to the aforesaid usage, including the said right or privilege to sell the gold, if the plaintiff, when required, failed to keep up his margin; that on the 6th of March, 1863, the margin put up by the plaintiff as aforesaid had been wholly absorbed, owing to the depreciation in the market price of gold, and that, in addition to said absorption, the plaintiff was indebted to the defendants on said purchases and owing to said depreciation in upwards of $7,000, and that agreeably to the usage aforesaid, with reference whereto the said purchases had been undertaken as aforesaid, the defendants, on said 6th of March, 1863, demanded and required that the plaintiff should restore the margin agreed on, and that thereupon the plaintiff refused to restore said margin either in whole or in part, and that after said refusal the said defendants, on the same day, ordered the sale of the said $100,000 in gold, and that pursuant to such orders, said gold was sold on said day in the city of New York, fairly, in good faith, and agreeably to said usage, and at the current price of gold when said sale took place. And that when the plaintiff was required as aforesaid to restore the margin agreed on, the plaintiff was told by defendants that unless said margin was restored they would sell the gold they were carrying for him, to which he replied, 'that if he put up more margin, that might be lost also, and that he would let the whole business go through.'

55

56 The defendants further showed that the plaintiff did not at any time subsequently to the 6th day of March, 1863, offer to put up the margin agreed on, nor did he before or after said day make any demand for the gold which had been purchased for him by defendant, as aforesaid, nor did he offer upon the delivery of said gold to pay the balance due thereon, and that upon said purchases the plaintiff owing to his failure and refusal to keep up his margin as agreed on, was, at the bringing of this suit, indebted to the defendants in a sum exceeding $47,000.

And the defendants then read in evidence so much of the prices current of gold in the months of January, February, and March, 1863,

as is found in the first page of "Samuel Hallett's American Circular, dated at "New York, January 6th, 1864," made a part hereof, to wit:

57 *Price of gold at New York, 1863, based on actual sales at the Stock Exchange, and showing the lowest and highest prices on each commercial day.*

	January.	February.	March.		January.	February.	March.
1...	Holiday.	Sunday.	Sunday.	17..	146⅜–147⅝	158½–159¼	154⅝–155¼
2...	133⅝–133⅞	156¾–159	171½–171¾	18..	Sunday.	160½–162	153⅜–155
3...	133¾–134½	154⅛–155½	171 –171¾	19..	147¾–148¾	161½–164	154⅞–155¼
4...	Sunday.	157 –158½	165 –168	20..	147⅝–148⅝	162½–163¾	154½–155
5...	134⅝–135½	156⅝–158	157 –158	21..	147¾–148½	162 –163½	153⅞–154⅞
6...	134 –134⅝	157¼–158½	150 –154	22..	147¼–148½	Sunday.	Sunday.
7...	134 –135	156⅝–157⅞	154¾–155½	23..	147 –148	163½–164⅞	151 –153½
8...	135⅞–137	Sunday.	Sunday.	24..	148⅜–150	167¾–171½	145½–159
9...	138 –138½	154½–156½	155¾–157¼	25..	Sunday.	171½–172⅜	139½–141¾
10...	136⅞–138¾	152½–153⅞	160 –163	26..	148⅞–151⅜	169½–172½	139 –140½
11...	Sunday.	152½–153¾	157⅝–158½	27..	153¼–154¾	169⅝–171	140 –140½
12...	140⅝–142½	154⅛–154⅓	158½–160⅝	28..	152½–154	171⅓–172⅛	142½–143⅓
13...	142 –144	155½–156	159 –161½	29..	153 –155½	Sunday.	Sunday
14...	146¾–148	155¼–156	157¾–158¾	30..	153 –158½	.....	144½–147½
15...	148½–148¾	Sunday.	Sunday.	31..	159 –160¾	.....	148½–150
16...	145½–145¾	155⅞–157½	154½–155½				

Year.	Highest.	Lowest.	Range.
January	160¾	133⅝	27⅛
February	172½	152½	20
March	171¾	139	32¾

58 The plaintiff thereupon prayed the court to instruct the jury as follows:

Plaintiff's 1st prayer.—That the defendants cannot rely upon the usage testified to in this cause for the purpose of showing an agreement between the defendants and plaintiff, by which the defendants should be at liberty to sell the plaintiff's gold without notice to him of the time and place of sale, unless the jury further find that such usage was uniform, known to the plaintiff at the time of making said agreement, and that the same was made in reference to such usage.

Rejected by the court.

Plaintiff's 2d prayer.—That the defendants were not authorized, upon the evidence stated in this cause, if the same is believed

59 by the jury, to sell the plaintiff's gold at any time they chose, without notice to the plaintiff of the time and place of sale, unless the jury are satisfied upon the evidence that the plaintiff expressly or impliedly authorized such sale to be made when the defendant chose, without notice of the time and place of sale and the burden of proof is on the defendants to satisfy the jury that such authority was given.

Rejected by the court.

Plaintiff's 3d prayer.—If the jury find from the evidence that the defendants purchased gold for plaintiff in February, 1863, as charged in their account read in evidence, and that such purchase was made from Lockwook & Co. under the terms of the special written contract dated 19th Feb'y, 1863, and read in evidence, and not under the general usages prevailing in the New York market; and if the jury find that such gold was sold by Lockwood & Co. under the authority so given to him by the defendants in said special contract, and without any notice of the time and place of sale, then such sale is not binding on the plaintiff, unless the jury find that he had notice of the terms of said special contract dated on the 19th Feb'y, 1863, when he ordered said gold to be purchased in February aforesaid.

Rejected by the court.

60 Plaintiff's 4th prayer.—If the jury find from the evidence aforesaid, that the defendants demanded of the plaintiff further margin on the 6th day of March, 1863, as stated in the evidence, and that the plaintiff declined at once to furnish the further margin so required, and the defendants then notified the plaintiff that they would sell said gold at their own risk, until the 18th March, 1863, when they sold the same; and if the jury further find that on the 10th March, 1863, the said gold was worth, to the knowledge of the defendants, in the market, much more than it was on the 6th, 7th, 8th, and 9th of March, 18th March, 1864, then the defendants are accountable to the plaintiff for the value of said gold on the 10th March aforesaid.

Rejected by the court.

Plaintiff's 5th prayer.—If the jury shall find from the testimony that both parties in the present issue contracted with reference to the usage of brokers in the purchase and sale of gold, the usage becomes part and parcel of the contract, qualifying the rights and obligations of the parties to it. To make the usage a part of the contract, the jury must find from the testimony that the parties contracted with reference to such usage.

61 Granted by the court.

D. K. CARTTER, *Ch'f Justice.*

Plaintiff's 6th prayer.—If the jury find from the evidence aforesaid that the defendants, on the 6th March, 1863, made a demand on the plaintiff for further margin on the gold they were then carrying for him, and that the plaintiff declined at that time to furnish more margin, although the said gold had depreciated so that the agreed margin was not then kept up; and if the jury further find that the defendants then notified the plaintiff that they would sell his gold, but they did not in fact sell it until the 18th March, 1863, when they sold it without any further notice to the plaintiff; and if the jury find that on the 10th day of March, 1863, the price of gold materially enhanced, to the knowledge of the defendants, then the plaintiffs are entitled to receive the enhanced market value of said gold, as the jury may find it to have been on said 10th of March, 1863.

Rejected by the court.

Plaintiff's 7th prayer.—If the jury find from the evidence that the defendants did not in fact sell the plaintiff's gold
62 on the 6th or 18th of March, 1863, but held the same without distinguishing it from their own gold in the hands of Lockwood & Co.; and that on the 10th March, 1863, the price of gold materially enhanced in the market, then it is competent for the jury to find the value of the plaintiff's said gold on said 10th March, 1863, as the measure of damages to be allowed the plaintiff.

Rejected by the court.

And the defendant prayed the court, as follows:

If from the whole evidence aforesaid the jury believe that in the respective months of January, February, and March, 1863, the defendants, as part of their ordinary business of brokers, bought and sold gold on commission in this city of New York for their customers, and had the same carried for them in said city, agreeably to the then usage of brokers in relation to the purchase, sale, and carriage of gold; and also believe from the evidence aforesaid that, under said usage, it was incumbent on the customer to keep up the margin on his purchase for the whole period that his gold was to be carried; and if during said period the said margin was at any time either wholly lost or greatly diminished by reason of a depreciation in the then market value of the gold so carried, that it was the right of the
63 broker under said usage to require the customer instantly to restore or re-establish said margin; and if, after being so required, the customer refused or failed to make said margin good by a further deposit with the broker of a sum equal to the depreciation in the then market value of the gold, that it was the further right of the broker, under said usage, to order an immediate sale of the said gold, and to have the same sold in the said city of New York in the manner or way authorized and sanctioned by said usage; and further, if the jury believe, from the evidence aforesaid, that on the 25th of February, 1863, the defendants, at the request of the plaintiff and agreeably to the aforesaid usage, purchased in the city of New York $75,000, and on the 27th of the same month purchased in the said city a further sum of $25,000 in gold for said plaintiff, on a 15 p. c. margin, and, in accordance with said usage, undertook to carry the said gold, so purchased as aforesaid for the said pl't'ff, for the period of 10 days next after the respective dates of its purchase as aforesaid, and that on the 6th of March, 1863, the aforesaid 15 p. cent. margin had been wholly absorbed by the depreciation in the then market value of said gold; and that by reason thereof, and agreeably to the aforesaid usage, the defendants, on the said 6th day of March, 1863, required the plaintiffs to restore the said margin by making a further deposit with the defendants, and that, after being so required, the plaintiff refused to make good the said
64 margin, or to make any further deposit on account of it, and thereupon that the defendants, on the said 6th of March, 1863, ordered a sale of the aforesaid and last-mentioned sums of gold, and that pursuant to their said order the said gold was sold on said last-

mentioned day at New York, fairly, in good faith, and agreeably to the usage aforesaid, then the plaintiff is not entitled to recover in this action.

Granted by the court.

D. K. CARTTER, *Ch'f Justice.*

But the court rejected all and each of the plaintiff's prayers, except the prayer No. 5, and granted the prayer of the defendants as prayed, and therefore the plaintiff excepts to the refusal of the court to grant each of his prayers as aforesaid, and to the granting of such prayer of the defendants, and prays that he may have the same benefit of exception as if the rulings of the court aforesaid were each and every of them separately excepted to in distinct bills of exception; and he prays that this his bill of exceptions may be signed, sealed, and enrolled; which is accordingly done, this 2d March, 1864.

[SEAL.] D. K. CARTTER, *Ch'f Justice.*

^5 MONDAY, *March* 14, 1864.

On motion of the plaintiff, by his attorneys, Messrs. Brent and Norris, the court orders that the defendants show cause why a new trial should not be granted; and that said motion be heard before the general term, in the first instance, upon the exceptions to the rulings of the court.

October, 1864.

Proceedings before the supreme court of the District of Columbia, in general term, at October term, 1864.—Present, Chief Justice Cartter and Justice Olin and Wylie.

WEDNESDAY, *October* 26, 1864.

Come as well the plaintiff, by his attorneys, Messrs. Brent and Norris, as the defendants, by their attorneys, Messrs. Davidge and Kennedy; and thereupon, upon consideration of the motion of the plaintiff made in the circuit court that the defendants show cause why a new trial should not be granted, and mature deliberation thereupon had, it is considered by the court that the rule be discharged, that the new trial be denied, and that defendants recover against the plaintiff their costs by them about their suit expended, and that they have execution thereof.

Supreme court of the District of Columbia, in bank.—Judgment affirmed.

COLUMBUS ALEXANDER
v.
SWEENY & HUYCK.

66 Mr. Meigs: Issue a writ of error and citation in the above case. Oct. 26, 1864.

R. J. BRENT, *for Pl'ff in Error.*

CLERK'S OFFICE OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
December 5, 1864.

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that, in pursuance to the foregoing order, I issue the writ of error as required; and that the writings annexed thereto, and in the foregoing pages contained, are true copies of their respective originals on file and of record in this office.

Witness my hand and the seal of said court.

[SEAL.] R. J. MEIGS, *Clerk.*

Filed November 20, 1865.

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In the Supreme Court of the United States.

DECEMBER TERM, 1867.—No. 54.

HUGH B. SWEENY AND LEONARD HUYCK
vs. ac of
COLUMBUS ALEXANDER.

This case ought to be dismissed for the want of jurisdiction.

1. Because there is no writ of error. The paper purporting to be such, being without seal, is void.

Act of Congress of May 8, 1792, s. 9, (1 Stat. at Large, 278.)

Overton *v.* Cheek, 22 How., 46.

Nor can the omission to affix the seal be cured by amendment. "An amendment presupposes jurisdiction of the case. And this Court have no appellate power over the judgment of the Court below, unless the judgment is brought here according to the act of Congress—that is, by writ of error." "This writ is not mere matter of form, but matter of substance, prescribed by law, and essential to the jurisdiction of this Court. And if it were amended here by making the Plaintiff in Error Defendants, and the Defendant Plaintiff in Error, it would be a new writ made here, and not the one issued by the officer appointed by law. Upon this principle the Court have uniformly refused to amend writs of error."

Hodge *v.* Williams, 22 How., 87.

Nor can the omission even be waived.

United States *v.* Yates, 6 How., 605.

2. Because the writ of error must be returned with the transcript at the next term of this Court.

This was not done. The supposed writ was tested November 3, 1864, and the citation to appear at the ensuing term was issued and served on the same day, (Record 1;) but the writ and transcript were not returned to this Court until November 20, 1865, (Record 31.) Thus a whole term of this Court intervened.

Hamilton *v.* Moore, 3 Dall., 371.
Villalobos *v.* United States, 6 How., 80.
United States *v*, Curry, Id., 106.
Steamer Virginia *v.* West & al., 19 How., 181.
Overton *v.* Cheek, 22 How., 46.
Garrison *v.* Cass County, 5 Wallace, 823.
Alviso *v.* United States, Id., 824.
Gorman *v.* United States, Id., 825.

For these reasons, without referring to others apparent on the face of the record, it is submitted the case should be dismissed.

W. D. DAVIDGE,
For Defendant in Error.

SUPREME COURT UNITED STATES.

ALEXANDER

vs.

SWEENY & HUYCK.

APPELLANT'S BRIEF.

This action was brought to recover certain monies claimed to be due by the defendants, upon operations in the purchase and sale of gold, and the narr claims $15,778, in various counts, including the usual money counts. Record 3 and 4.

The only plea being that of the general issue, the plaintiff on the trial proved that he had in January and February, 1863, deposited sums of money amounting to upwards of $15,000 as margin or security for purchases of gold, to be made in New York for him by the defendants, and that defendants were at said dates partners, and as such, engaged as bankers and brokers, among other things in buying and selling gold for their customers, and then rested his case, (see first exception, record 6),

The defendants then gave evidence to prove that they had made various purchases of gold in New York, on account of the plaintiff, for which they had put up the requisite security or margin in the hands of Lockwood & Co., their correspondents in New York, to whom they did not disclose the name of the plaintiff or any of their customers, they making purchases from Lockwood & Co., not only on account of their customers, but their own individual account; they *alone being* known to Lockwood & Co. (Record p. 6.)

The first exception, is taken to the admission of evidence that by the *general course* of dealing of *brokers* engaged in the business of defendants, in buying and selling gold, whenever the broker was employed to buy gold for a customer who had put up the

agreed margin, by using the same and pledging the credit of said broker for the balance of purchase money, the right to sell the gold purchased was reserved to the broker, if the said margin was not kept up as agreed.

The appellant excepts to so much of said offered evidence, as relates to the right of the broker to sell, and the court overruled that objection. In considering this evidence, we hold it to be inadmissible,

1st. Because the contract as proved in page 6, said nothing about the right to sell. Whether it did or not, usage could not be received to add to or vary the contract.

Oelricks et al *vs.* Ford, 23 How. 59.
Wheeler *vs.* Newbould, 16 New York Rep., 401, 2.
Newbold *vs.* Wright & Sheeton, 4 Rawle, 195.

2d. Because in such case of default on the part of the customer, the law provides that there shall be a right to sell at public sale, upon full notice of time and place to the customer, and no evidence of usage could add to or qualify that legal right.

3 Bosworth, 585.
Stearns et al *vs.* Marsh, 4 Denio, 227.
2 Comstock, 443.
40 Barbour's Rep., 641.
16 New York, Rep., 401.

In no case can usage be tolerated to subvert or impair a rule or principle of law.

Rothschild's case, 3 Simons, 153.
Walker *vs.* Transportation Co., 3 Wallace, 150.
Thompson *vs.* Riggs, 5 Wallace, (*not reported.*)
Bume *vs.* Dord, 1 Seld., 102.
Thompson *vs.* Ashton, 14 Johns, 316.
Higgins *vs.* Moore, 34 New York, 425.
2 Sumner, 568.
Foly *vs.* Woodside, 6 Maryland, 49.
Strong *vs.* Bliss, 6 Metcalf, 393.

Usage cannot alter the nature of a fiduciary contract, and the measure of legal liability.

2 Pennsylvania State Rep., 237.
19 How., 315, 6, 7,

Dykers & Alstyne *vs.* Allen, 7 Hill, 497.
1 Selden, 155.
2 Sandford, (Supreme Court,) 127.
1 Selden, 41.
6 New York R., 64.
11 Gray, 111.

When the appellees bought the gold on *commission*, as shown in page 6 of the record, they were but bailees, and in the light of pledgees. The charge of a commission as shown in the evidence stamps them indelibly as fiduciaries and it is not like a general deposit in bank.

4 New York (Comstock) R., 76–80.
Tinkham v. Heyworth, 31 Illinois Rep., 522.

The gold when bought could not be theirs, as they were to carry it for a definite time, and to charge commissions in the nature of interest on the purchase money advanced to buy it.

As one gold dollar is equal to another, it may be carried or held by keeping on hand always enough gold coin clear of other contracts to meet the demand for the identical gold or its equivalent in gold.

Nourse *vs.* Prime, 4 J., Ch. R., 493.
Nourse *vs.* Prime, 7 J. Ch. R., 86.
Paley on Agency, 51, side page.

All these points were finally considered and settled in Dykers & Alstyne *vs.* Allen, 7 Hill, 497; and this last case ruled out the usage as subversive of the contract.

To the same effect is a later case, and which also holds that a broker buying on margin as here is but a pledgee.

Hunt *vs.* Morgan, 19 New York Rep., 172.

In Andrews *vs.* Clarke, 3 Bosworth, 585, the whole law is succinctly stated, and its principles are sustained by—

40 Barbour, 641.
13 Abbot's Pract., R., 468.
22 How. Pract., R., 340.
16 ——, 89.
6 Selden, 217.
13 Wright, 363.

If the usage be admissible, it must appear to be known to and practiced on by customers and dealers, and not merely *ex-parte*.

9 Peck, 430.
2 Phil. Ev., 730.
12 Moore's Privy Council, R 399.
97 Eng. Com. Law Rep., 480–1.
10 Md. R., 248.
2 Stark Ev., 361.

SECOND EXCEPTION.

The clerk has by inadvertence placed this exception after the rendition of verdict and judgment. (See page 8.) But it is manifest from its incorporating all the evidence on both sides, as well as the instructions to the jury prayed for, rejected and granted, that the exception was in fact, taken prior to the verdict.

To rebut the admitted evidence of usage, we proved by Legrand Lockwood that in the case of a contract like ours, the usage is for the broker to sell after default, on notice, but that the defendants gave him a special authority to sell without notice all the gold he was carrying for them.

See his deposition, p. 9, and the special power given by defendants to Lockwood & Co., pp. 9 and 10.

This special and private agreement made by defendants without our knowledge, authorized the sale of our gold without any notice to us of time or place, contrary to the usage as proved by Lockwood and contrary to the general rule of law.

The plaintiff then read copies of accounts current between Lockwood & Co., and the defendants, of gold bought and sold to upwards of a million of dollars in three months, covering the period of our orders. (See pp. 10, 11, 12 and 13.)

And in p. 13, we find the first account rendered 6th February, 1863, to plaintiff without day or date as to the items, but subsequently they rendered a full account to 18th March, 1863, covering all the *plaintiff's* alleged transactions in January, February and March, 1863, and bringing plaintiff in debt $4,562.37. (Record p. 14.)

It is therefore manifest that the gold reported as purchased by the defendants for the plaintiff, was never in their hands at all, but left in the hands of Lockwood & Co., who furnished the purchase money upon margin put up by defendants as middle men, and who

of course held a lien, not only for the purchase money of this gold of plaintiff's, but for that of all other gold purchased by the defendants for themselves and other customers,and the lien was on the whole mass of gold they were carrying for defendants, and to secure any balance they might owe on general account, thus putting plaintiff's gold when purchased, (*sub-modo* only,) in a pool with a million of other gold purchased for other people, and making his gold a pledge for losses on theirs.

No such transaction was ever disclosed to plaintiff, and the hazards which he was thus made to run, by the wrongful act of defendants, are shown by the significant telegram of Lockwood to the defendants on the 6th March, 1863. (See p. 23.)

Lockwood tells the defendants that "the sales of yesterday do not furnish sufficient margin," meaning on their general account.

If, therefore, they had been unable to make their margin good, all the gold standing in their names, including ours, would have been sold without notice for their default.

These perils and this original lien which intercepted the delivery of the gold reported as purchased, conclusively negatives the idea of a legal execution by the defendants of our orders to buy, and of course entitles us to a return of our deposits or margins upon the following considerations and authorities:

THE GOLD NEVER PURCHASED.

The accounts current show that the appellees bought our gold in common with other gold, and left all as a blended fund in the hands of their correspondents in New York, where, of course, our gold was made liable for any loss arising on other transactions made by the defendants, and therefore they never really executed our order, or had our gold in their hands or legal control for a day. All they did, as these accounts show, was when we ordered a sale of what we supposed they had bought, they gave an order to sell so much gold, and charged us a loss or profit according to the then market value, but they really never had the ability to deliver us our gold, for it was always held in a *general* account current liable for the casualties of defendant's other transactions. The result of these views is, that there never was any execution of the power to buy gold, inasmuch as our paid agents falsely represented that they had bought gold for us when it never passed into their hands. Our mar-

gins, were therefore recoverable back as upon a failure of consideration.

There must be always a *present* ability to *deliver* if called on.

Porter *vs.* Rose, 12 Johns, 209.
Topping *vs.* Root, 5 Cowen, 404.
Henning *vs.* Potter, 7 Watts, 380.
1 Marshalls (English) R., 514.
12 M. & W——, 433.

A failure to remove incumbrances is a breach of vendor's contract.

12 Barb., R. 146.
Lawrence *vs.* Knowles, 5 Bingh. N. cases.
9 M. & W., 816.
1 Selwyn's N. P., 116.

Where contractor disables himself to perform, the other party may rescind.

2 Smith's Leading Cases, 42, in notes.
Bank of Columbia *vs.* Hayner, 1 Peters, 466.

To charge the appellant the appellees were as much bound to keep his gold separate from the speculations and losses of other parties, as the Government were bound to keep the contractors accounts separate, as decided in—

8 Peters, 417–418.

There must be an actual possession of the thing bought by the agent, to buy.

2 Kent's Com., 500 and 503.—496 and note to 501.

If gold never purchased and put in control of appellees, the margins were recoverable back, and the ruling of the Court has cut us off from this recovery.

Voris *vs.* Macreedy, 16 How. Pract. R., 88.
Conkey *vs.* Bond, 34 Barb, 277.

The defendants confusion of our gold in their general account, brings the case within the principles ruled in—

Parsons *vs.* Martin, 11 Gray, 111.
Bank of Metropolis *vs.* New England Bank.
1 How. 240.
6 ——— 225.

No usage can allow an agent or broker to interpose his own interest

in the way of his duty to his principal, and the transaction must be annulled.

Gillet *vs.* Peppercorn, 3 Beavan's R., 81.
Fox *vs.* Mackreth, 1 White & Tudor's Leading Cases in Equity, 72, in notes, and see p. 137.
6 Pick. R., 203–4.

Where agent pays his principal's money into his banker's account and uses it as his own, he is liable at law for interest.

Rogers *vs.* Boehm, 2 Esp., 702.

A receiver keeping trust money in a general account, buying stock, &c., it is a breach of trust.

11 Vesey, 380–1–2.
Story, Agency, 196.

Sale of goods mortgaged before debt is due, is a conversion.

8 Eng. Law and Eq., 483

Conceding that the gold was bought, yet the accounts current show that the defendants left each lot of gold in the hands of his correspondents in New York without orders to hold it for the time stipulated in our contract with them. This is a breach of their contract to carry the gold for a definite time, and makes them convert it as of the day and at the price of the several purchases.

4 T. R., 260.
2 B. & P., 438.

Being but pledgees, any misuse or conversion of the gold makes them chargeable for its value, as of the day of conversion.

4 T. R., 26.
10 Johns, 172.
4 Campbell, 183.
6 Duer, 24.
14 Johns, 128.
1 E. D. Smith, 203.

Fiduciary must refund all profits made.

Tiffany on Trusts, 485–462.

Even conceding that the usage in this case was not excluded by general principles of law, yet it is shown on its face to be inadmissible as an usage of fraud and plunder.

3. Campbell, R. 43.
Clark *vs.* Tipping, 9 Beavan, 287.
4 Rawle. 195.

In conformity with these principles and authorities, notwithstanding the adduction of evidence by the defendants tending to show the usage to sell, as they claimed it, the Court erred,—

1st. In rejecting plaintiff's 1, 2, 3, 4, 6 and 7 prayers, (Record 27-9,) and in granting defendants' prayer, (Record 29.)

BRENT & MERRICK,
For Plaintiff in error.